

July 28, 1998

The Honorable Edward J. Markey
House of Representatives
Washington, D.C. 20515

Dear Ed:

Thank you for your letter concerning the privacy of personal financial information and, in particular, the use of this information in the cross-marketing of products. Your letter raised a number of detailed questions in this area. Board staff has attempted to address these questions in the enclosed paper.

The appropriate balancing of the increasing need for information in guiding our economy to ever higher standards of living, and essential need of protection of individual privacy in such an environment, will confront public policy with one of its most sensitive tradeoffs in the years immediately ahead.

A critical component of our ever more finely hewn competitive market system has been the plethora of information on the characteristics of customers both businesses and individuals. Such information has enabled producers and marketers to fine tune production schedules to the ever greater demands of our consuming public for diversity and individuality of products and services. Newly devised derivative products, for example, have enabled financial institutions to unbundle risk in a manner that enables those desirous of taking on that risk (and potential reward) to do so, and those that chose otherwise, to be risk averse. It has enabled financial institutions to offer a wide variety of customized insurance and other products.

Detailed data obtained from consumers as they seek credit or make product choices help engender the whole set of sensitive price signals that are so essential to the functioning of an advanced information based economy such as ours.

Yet, as you so appropriately point out, this very mechanism of information creation runs the risk of breaching personal privacy. Confidentiality of personal financial reports has become increasingly valued as the economy has become ever more complex and seemingly impersonal. In generations past, it was adequate for the corner grocer in planning his inventory to know that a customer preferred a certain type of coffee. In today's far more sophisticated markets, the retailer, to be appropriately positioned to meet competition, needs far more details on customer characteristics and his finances than his forbearers. Obviously, it is to the advantage of consumers to supply such information that enhances the choice of available goods and services. But where does the tradeoff become adverse from a consumer's point of view, for obviously it is he or she who must make the judgment? Too little information that can be used in marketing leads to a decline in the quality of the goods and services offered. Too much can be perceived as an inordinate incursion of privacy of person.

The major acceleration in information technology of recent years, in my judgment, has not as yet reached a point where public policy can become clearly defined on this tradeoff. It is doubtless essential that egregious misuse of information be addressed, but we need to be careful in the process not to preempt the development of a broader policy in this sensitive area that balances the consumer's standard of living and the fundamental need of privacy of person.

Regrettably, the issue of the privacy of personal financial information to date has been addressed on an ad hoc basis resulting in, at best, uneven privacy protection. In part, this uneven treatment may be due to the tension between the economic value of information about individuals and the value that individuals

place on privacy. Recent information from the popular press and other sources suggests that current market forces may not be addressing this issue adequately, possibly owing to an inadequacy in the information available to the general public as to commercial practices. Other information suggests that market forces may be at work and that financial institutions, trade associations and self-regulatory organizations are acting to address privacy concerns.

It is important in these circumstances, that the fundamental issue of privacy of personal financial information and its economic value be addressed in the context of a full understanding of these competing interests. Then, consistent judgments could be made across markets as to the ability of market forces to resolve these issues and the potential need for federal action. One means of providing an appropriate context would be to raise the public awareness of current commercial practices with respect to personal financial information so that individuals can bring market forces to bear in shaping the practices of business. However, even in raising public awareness, at this stage, it may be preferable to avoid legislative or regulatory solutions that artificially shape markets and influence behavior, especially when information technology is moving at a pace that renders previous regimes obsolete at an increasingly rapid pace. Once there is developed a fuller understanding of both commercial and individual interests and some understanding of imminent changes in our information transmission systems, Congress would be in a better position to evaluate these competing considerations. Clearly, in the interim however there may be specific problems that are so acute that they require immediate remediation through legislation or otherwise.

Sincerely,

Enclosure